

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIR LINDA NELSON, on March 14, 1991, at 2:45 p.m.

ROLL CALL

Members Present:

Linda Nelson, Chair (D)
Don Steppler, Vice-Chairman (D)
Bob Bachini (D)
Joe Barnett (R)
Gary Beck (D)
Jane DeBruycker (D)
Roger DeBruycker (R)
Jim Elliott (D)
Marian Hanson (R)
Harriet Hayne (R)
Vernon Keller (R)
Don Larson (D)
Jim Madison (D)
Ed McCaffree (D)
John Phillips (R)
John Scott (D)

Staff Present: Doug Sternberg, Legislative Council
Claudia Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 841

Presentation and Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, House District 17, Malta, said the original intent of this bill was to decouple the Alfalfa Seed Committee from the Department of Agriculture. There were conflicts within the various interests and the concept became too controversial. For the short term, the people that work within the department and the Seed Committee should be separated. Take the funds they receive and apply it to the Seed Committee so they can control it. This bill addresses a pay plan exemption of an FTE which is a one-third employee for the entire program. The Alfalfa Seed Committee budget requested for FY 1992 and 1993 is \$28,759 and \$28,838, respectively. This program is funded 100%

through dollar check-offs, not tax dollars. The producers that are making dollar check-offs want control of those dollars. This is a statutory appropriation. He said there would probably be opposition from the department.

Proponents' Testimony:

Keith Reynolds, Winnett, said he is presently a member of the Alfalfa Seed Committee and this year he is the chairman. The Alfalfa Seed Committee supports the flexibility of the bill. The funds they make grants with vary according to the crop year. This year there are 6 million pounds of alfalfa seed; it could be back down to 1 million next year.

Mae Reynolds, Winnett, said she is the secretary for the Alfalfa Seed Growers Association. As their representative, she is in favor of the bill. The funding for this committee comes directly from the seed growers themselves. The Alfalfa Seed Growers Association selects the members or nominees for the Alfalfa Seed Commission and feels confident that what they do is on behalf of all the seed growers.

Opponents' Testimony:

Steve Johnson, Chief of State Labor Relations Bureau, said he appears on behalf of the Department of Administration in opposition to HB 841. The purpose of this bill is to exempt the Alfalfa Seed Committee from the statewide classification and pay act. Although the bill does not address pay, the effect will be to enable the Alfalfa Seed Committee to provide pay rates and raises beyond those provided in the statewide matrix. The classification and pay act was passed in 1973 to bring order, equity, fairness, and consistency to the state's pay practices. This continues to be a worthy objective. Exempting the position from the general policy of that law is not the issue here, since the state's policies are minimum standards that are necessary to comply with the state and federal laws. The Alfalfa Seed Committee will have to replicate these minimum standards in any case. He said one of the problems with the state classification and pay act, was that past Legislatures purposely depressed and froze state salary ranges in order to save costs. Consequently, the salary ranges for the grade levels are well below the market, especially for professional salaries. The state's pay system is deteriorating into a breakdown of exemptions. There are also problems with exemptions to the plan. Each new exemption encourages others. This trend will set the state back to pre-1973 pay practices when salaries were based on each individual agency's funding source and management style, and the state was not paying equal pay for similar work. Exemptions are not fair to managers who do not have resources or authority to seek exemptions, but must compete for employees with managers who have exempt staff. Exemptions single out an occupation for special treatment. This is demoralizing and unfair to the rest of the state workforce. The administration opposes continuing chronic

pay problems through exemptions and exceptions for a few select employees. He urged the Legislature to address all state employees pay in a comprehensive manner and adopt a rational philosophy for state pay practices. He said such a philosophy was developed by the state employee compensation committee, which recommended the state adopt a market based philosophy and establish pay ranges that reflect the market. He urged the committee not to adopt HB 841.

Questions From Committee Members:

REP. HANSON asked if this is certified seed that is being discussed. Mr. Reynolds said the check-off is strictly on seed sold through the channels; e.g., common seed, certified seed, any seed that is handled through seed companies. The first time seed is sold there is a $\frac{1}{2}\%$ taken off the price of the seed. This is where the funds originate for the committee.

REP. PHILLIPS asked if the funds amount to the \$28,000 that was discussed earlier. Mr. Reynolds said it varies according to the crops. He said since census came into effect it has been down as low as \$5,000 and as high as \$35,000. REP. PHILLIPS asked what the committee uses the money for. Mr. Reynolds said the major part of it is used as a grant issuer for college (MSU) in alfalfa seed production. One grant goes to the statistician's office, who gives the committee their crop reports every year.

REP. BARNETT asked about the long-range effect of the proposed legislation that would result in a reduction of available revenue for program promotional development. REP. BARNETT wanted to know what programs would suffer if the committee granted the request in this bill. Mr. Reynolds said the part they participate in would not be affected.

REP. BARNETT asked the same question of Steve Johnson. Mr. Johnson said he was not familiar with the program the fiscal note was referring to. He thought maybe if a certain amount of money is budgeted for salary now and later increased, that money will have to come from somewhere else in the program.

REP. BECK asked Mr. Johnson if the Department of Administration could change the active classification so people would be paid according to their positions. Mr. Johnson said the main purpose of the classification plan is to confirm certain equity and that jobs are comparable according to pay levels. He said people's pay cannot be changed for reclassification. The pay is changed through the general appropriations of the state pay matrix that raises levels of increases. REP. BECK asked what the starting wage of an engineer's pay would be at the state level. Mr. Johnson said the starting grade rate for an engineer is a grade 12 or 13, about \$19,000 per year. REP. BECK asked if the Department of Administration is so concerned about this, why don't they change the classification when they have the power to do so. Mr. Johnson said the way the pay raises have been lately,

they mainly apply to lower grades. REP. BECK asked what the market base concept is that was referred to in earlier testimony. Mr. Johnson said the market base pay philosophy is that the state of Montana should pay average rates paid by other employees within a relative marketplace. REP. BECK said under the Governor's proposal and the pay plan, how much money would it take to move these people towards the market base and would there be enough money to do that. Mr. Johnson said the Governor's pay plan was included in appropriations for \$55 million, and that would not move all employees toward the average rate. REP. BECK asked if it were true that it will take about 10 years to reach that market base. Mr. Johnson said it wouldn't take that long. The most important part of that is the cost of moving the employees to reach entry rate. Once that entry rate was reached, it wouldn't take that much to reach the market base. He didn't think it would be a constant cost each year.

REP. BACHINI asked Mr. Reynolds if it were correct that he was not concerned with the pay plan, but rather with the grants. Mr. Reynolds said their concern is the way the funds are handled. REP. BACHINI asked if the grants are included in the state pay plan. Mr. Reynolds said they have an executive secretary that handles the day-to-day operation and this is the reason that part is in the bill.

Doug Sternberg, Legal Counsel, addressed REP. BACHINI'S concerns. Mr. Sternberg said there are two issues that are being addressed here: 1) section 1 addresses the pay within the state classification plan for employees assigned to the Alfalfa Seed Committee; 2) sections 2 and 3 are the sections that Mr. Reynolds referred to that relate to funding and the accessibility of the Alfalfa Seed Committee to the funds. If sections 2 and 3 were enacted, instead of the committee having to come back to the Legislature on a biennial basis for an appropriation, it would statutorily direct those funds to the committee on a permanent basis. REP. BACHINI asked if it were possible to strike section 1 and keep sections 2 and 3. Mr. Stenberg said they could.

REP. BECK asked what the one-third employee make in wages at this time. Mr. Reynolds said he makes about 1/12th of the average salary.

REP. BARNETT asked Mr. Reynolds why the fiscal note doesn't show any dollar signs in any direction. Is the money that comes in from the check-off plan disbursed back to the committee to spend, and does any surplus money go into the general fund. Mr. Reynolds said there is some money that is carried over and invested in the state, but they have to go before Legislature to get this money. Mr. Reynolds said they would like the funds to be available to them, so when there is an abundance in crops they can use that money for grants.

REP. BECK asked CHAIR LINDA NELSON if this is different than the Wheat and Barely Committee bill the committee heard earlier,

where the people were funded strictly from the fund and this bill is just for the part-time employee. CHAIR LINDA NELSON said it sounded similar to her.

CHAIR LINDA NELSON asked why the fiscal note is plural when referring to a one-third FTE employee. Would there be more employees added later on. REP. BERGSAGEL said it was probably a typo. CHAIR LINDA NELSON said the committee would have to amend the bill to say "employee".

REP. BARNETT asked Mr. Reynolds if the Alfalfa Seed Committee wants the money for grants, and all the money comes back to them, what is preventing them from putting more of the money out where they need it. Mr. Reynolds said the grant requests are made at the first of the year. He said the money is more or less appropriated by the Legislature for 2 years. He said when they put out so much for 1 year, the Legislature expects them to put that same amount out for the following year. But with the crop variations they have more funds in 1 year than in another, and that is why they want more flexibility.

CHAIR LINDA NELSON asked Mr. Reynolds if he would mind if the committee amended section 1 out of the bill. Mr. Reynolds said no. Their executive secretary is only part-time and he did not think this would change in the future. CHAIR LINDA NELSON asked Mr. Reynolds if what they were basically asking for is to manage their own money. He said yes.

REP. BACHINI asked Mr. Johnson if the committee would strike section 1, what would be the feeling of the Department of Administration. Mr. Johnson said he would go away.

CHAIR LINDA NELSON asked Mr. Reynolds if this is a mandatory check-off. Mr. Reynolds it is. The money is taken out, but the growers can request their funding back. He said less than $\frac{1}{2}\%$ of the group request it. CHAIR LINDA NELSON asked if there is a time limit to request this money back. Mr. Reynolds said yes. CHAIR LINDA NELSON asked if this could be done by telephone. Mr. Reynolds said it is a written request.

REP. KELLER asked if by statute they have to leave a portion of the money in there all the time. Mr. Reynolds said yes, a portion of the money goes for administration.

Closing by Sponsor:

REP. BERGSAGEL felt that an agreement had been made to strike section 1. He said the Alfalfa Seed Committee is only asking for the authority to use the money they provide in the check-off dollars for what they deem in their best interests. REP. BERGSAGEL said the money is used for research projects, increased productivity, and hopefully, increase the money of people involved in agriculture.

HEARING ON SB 409Presentation and Opening Statement by Sponsor:

SEN. JOE MAZUREK, Senate District 23, Helena, said this bill is a request of the Department of State Lands. He distributed a letter from an attorney, Allen Karell in Billings, who specializes in agricultural lending and foreclosures. Mr. Karell said he has dealt with mortgages on state leases and the amendments to SB 409 create more harm than good. He felt the bill should be killed. SEN. MAZUREK asked the committee to work with him on the bill because the objective of it is good. Over the past 3 years the department has been named as a defendant in 30-plus lawsuits. Lenders have foreclosed and named the department as defendants in the foreclosure action. The department is named because they have entered into leases of agriculture lands or state lands with the farmer/rancher, and the lease is listed as security in the terms of the mortgage. The department does not have any interest in the foreclosure action. It should be between the farmer/rancher and the lender. The department is then involved in lengthy lawsuits and has to hire a defender to get them out. This bill will eliminate the necessity of the department to be involved in these lawsuits. When the farmer/rancher applies for financing, instead of listing the state lease as an additional item of collateral, the farmer/rancher would assign their interest in the state lease to the bank as collateral for the loan. In the event a foreclosure took place against the farmer/rancher, and the action was completed, the lender could go to the department and ask for the lease on the agricultural land or that the lease on state land be assigned or transferred to the lender. If the procedure were in place, the department would always reserve the right to require that any lender that is handling the foreclosure would have to be a qualified lessee in order for that assignment to take place. The way the bill was intended should not affect the way farmers/ranchers do business. Instead of the lender taking a mortgage, there would be an assignment of the landowner's interest in the lease. It is the assignment that has caused some concern for Mr. Karell. SEN. MAZUREK said that Mr. Karell and the department have talked today regarding some of the concerns that Mr. Karell has. He hoped the committee would keep in mind what this bill proposes; that is to keep the department from involvement in lawsuits. Mr. North, the legal counsel for State Lands, has been working with Mr. Karell to make an amendment that would better explain what they want to accomplish with this bill.

Proponents' Testimony:

John North, Department of State Lands, said SEN. MAZUREK adequately covered what State Lands is trying to do. He said they are trying to streamline the process by keeping the department out of lawsuits they should not be involved in. This will give the lenders the same rights they currently have without involving the department. He wasn't aware that Mr. Karell had

any problems until this morning. He wanted the committee to wait for a couple of days so he and Mr. Karell could get everything worked out. Mr. Karell has some good ideas but he might also have some misunderstandings. He wanted to emphasize that the department is trying to keep the costs down for doing business in Montana. The department is not trying to change anyone's rights or put anyone at a disadvantage. He said if the committee would give him the opportunity for some amendments to be placed in the bill, it will do what the department wants. EXHIBIT 2

Opponents' Testimony: None

Informational Testimony:

CHAIR LINDA NELSON informed Mr. North that the committee will be working on this bill next Thursday, March 21. Hopefully, it will give him enough time to talk with Mr. Karell to work something out.

Questions From Committee Members:

REP. KELLER asked if there has ever been a case where the lessee has kept a state lease after their land was foreclosed on. Mr. North said there has not been a case where the ultimate foreclosure has failed, but an attorney for a foreclosing bank failed to include the lease in the foreclosure action. After the foreclosure is final, the attorney goes to the department and demands the transfer of the lease. Since the lease was not included in the foreclosure, the department tells the lender they cannot do that unless they receive an assignment from the lessee. Sometimes the lessee has assigned this over to the lender and when they don't, the foreclosure has to be reopened with the state lease included. When the court order comes out with the state lease included, then the department makes the transfer.

CHAIR LINDA NELSON asked Mr. North if the amendments were placed in the bill in the Senate committee or on the floor. Mr. North said in the committee at the request of the department and SEN. MAZUREK. This bill came out too late in the process. Usually the person drafting the bill will contact the agency to go over everything to make sure it is correct. That is the reason it was done in committee.

REP. STEPPLER informed the committee that the letter from Mr. Karell will go on record as an opponent. EXHIBIT 1

Closing by Sponsor:

SEN. MAZUREK thanked VICE-CHAIR REP. STEPPLER, for placing the letter from Mr. Karell as an opponent. He thanked the committee for the good response, and for waiting until next Thursday to do executive action to give Mr. North more time to work on amendments for the bill.

EXECUTIVE ACTION ON HB 841

Motion: REP. BACHINI MOVED HB 841 DO PASS.

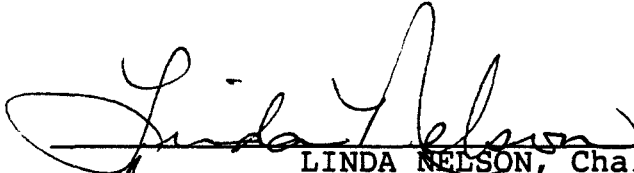
Discussion: REP. BACHINI offered an amendment to strike section 1 in its entirety. Question was called. Voice vote was taken. Motion CARRIED unanimously.

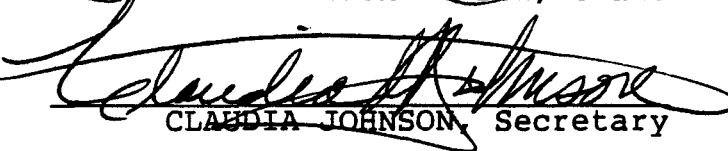
Motion/Vote: REP. BACHINI MADE A SUBSTITUTE MOTION THAT HB 841 DO PASS AS AMENDED. Question was called. Voice vote was taken.

Vote: HB 841 DO PASS AS AMENDED. Motion CARRIED unanimously.

ADJOURNMENT

Adjournment: 3:50 p.m.


LINDA NELSON, Chair


CLAUDIA JOHNSON, Secretary

LN/cj

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE

ROLL CALL

DATE 3-14-91

NAME	PRESENT	ABSENT	EXCUSED
REP. DON STEPPLER, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. JOE BARNETT	✓		
REP. GARY BECK	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. JIM ELLIOTT	✓		
REP. MARIAN HANSON	✓		
REP. HARRIET HAYNE	✓		
REP. VERNON KELLER	✓		
REP. DON LARSON	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. JOHN PHILLIPS	✓		
REP. JOHN SCOTT	✓		
REP. LINDA NELSON, CHAIR	✓		

Claudia

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3-14-91
me

HOUSE STANDING COMMITTEE REPORT

March 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that House Bill 841 (first reading copy -- white) do pass as amended .

Signed: _____
Linda Nelson, Chairman

And, that such amendments read:

1. Title, lines 4 through 6.
Strike: "EXEMPTING" on line 4 through "PLAN;" on line 6
2. Title, line 7.
Following: "TO THE"
Insert: "MONTANA ALFALFA SEED"
3. Title, line 8.
Strike: "2-18-103,"
Following: "17-7-502"
4. Page 1, line 12 through page 2, line 20
Strike: section 1 in its entirety
Renumber: subsequent sections

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LOUIS R. MOORE
GARELD F. KRIEG
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MYLES J. THOMAS
GEORGE C. DALTHORP
DAVID L. JOHNSON
KEMP WILSON
ROBERT EDD LEE
HERBERT I. PIERCE, III
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CHARLES R. CASHMORE
LAWRENCE S. COZZENS
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JAMES P. SITES
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RENEE L. MOOMEY
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JOHN R. LEE
STEVEN R. MILCH
MARY E. DUNCAN
SCOTT M. HEARD
LEONARD H. SMITH

March 8, 1991

The Honorable Joseph Mazurek
Montana Senate
Capitol Station
Helena, MT 59620

Re: Senate Bill 409

Dear Joe:

I have just seen the amendments made to Senate Bill 409, which you introduced. As an attorney who specializes in agricultural lending and foreclosure, I have dealt a great deal with mortgages on state leases. I think the amendments to your bill create more harm than good and that the bill should be killed.

I firmly believe that the legal concept of mortgaging a lesser's interest in a state lease is far better and more logical than allowing assignments of state leases as security for loans. Here are just a few problems that come to mind with this bill:

- (1) If a lease must be assigned in order to take it as security, how will the Department of State Lands deal with a lessee's request to assign his lease to a purchaser of his ranch who is buying subject to an existing mortgage for which the leasehold has already been assigned?
- (2) What happens if a lender, who has been assigned a lease as security, forecloses, but a third party purchases the property (including the lease) at sheriff's sale? If the assignment has been made to the lender, how will the lease be transferred to the third-party purchaser?
- (3) The amended bill says a lessee MAY NOT mortgage his state leasehold interest. But the encumbrance of state leases are usually described in the mortgage along with

The Honorable Joseph Mazurek
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EXHIBIT 1
DATE 3-14-91
HB 841

all the other collateral. If the lease cannot be included in the mortgage, what security document will exist to evidence the fact that the lease is to serve as collateral. I do not think the state form of assignment is, by itself, sufficient to satisfy this concern.

Overall, I think existing law is preferable to this bill. Actually, if the Department of State Lands would only recognize a state court judgment of foreclosure covering a state leasehold interest as valid, and process an assignment of that lease signed on behalf of the lessee by the sheriff conducting the foreclosure sale, this legislation would not be necessary at all. I think the Department is misguided and erroneous in its interpretation of existing law. This bill, as amended, will only make the law worse, not better.

If the statutes must be amended, then merely add a section stating that a foreclosure judgment and sale of state lessee's interest must be recognized by the State, but that the State is not bound to transfer the lease to an unqualified purchaser. It can be that simple.

Please do not allow SB409 to become law in its present form. It is bad legislation.

Sincerely yours,

ALLAN KARELL

AK:bm

cc: Linda Nelson, Chair, House Agriculture Committee
Don Stepler, Vice-Chair, House Agriculture Committee

TESTIMONY OF JOHN NORTH, DEPARTMENT OF STATE LANDS
House Agriculture Committee
March 14, 1991
SENATE BILL 409

The purpose of these changes is to keep the department from becoming embroiled in foreclosure suits between its agricultural and grazing lessees and their lenders. This type of litigation is increasing, and the department must spend valuable time and resources in defense. However, the department has no real interest in what essentially are creditor/debtor disputes. The department's only concern is protecting the integrity of the school trust lands that become involved in the suits on account of mortgages of the lease-hold interest.

The department would not have to be named as a party to foreclosure actions if the leases were not mortgaged because then no encumbrance of the leasehold interest would appear on the land records and title foreclosure reports. Present law permits mortgaging of leases, so amendment is necessary to prevent mortgaging. The proposed changes eliminate lessee's authority to pledge or mortgage their state leases and create the substitute method of "assignment for security purposes." (Such label will distinguish these assignments from the assignments for use of the lease tract as provided by Section 77-6-208.) It should be emphasized that these changes are intended only to alter the method of encumbering a leasehold interest. Lessees may continue to offer their leases, and lenders could accept them, for whatever collateral value the parties deem them to have. This legislation does not alter the substantive rights of the parties.

As in past practice with mortgages, it is contemplated that these security assignments would only occur as part of a larger transaction involving the mortgage of private lands. The difference here is that the lender would not record a mortgage covering the lease but instead would file a security assignment with the department. There is no loss of protection for either a lessee or a lender by this change in procedure. Persons who deal subsequently with the lessee will not be harmed by the absence of notice of encumbrance of the lease in the land records, since the fact a state tract is involved is discoverable from the land records and such persons are always free to inquire of the department regarding the status of leases.

If these proposals become law it should be understood that the effect will be gradual. Doubtless there are many existing mortgages of state leases, and to the extent they are foreclosed the department will remain a necessary party to litigation. Over time, however, such mortgages will pass from the scene and the full benefits of this legislation will be realized.

EXHIBIT _____
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HB SB 409

For the information of this Committee, a check of the Department's files discloses that 31 foreclosure suits naming the Department as a party defendant have been filed within the past 5 years, with the majority of those within the last 3 years. 18 cases have been or are in state court, the other 13 in federal court. Due to the large amounts of money involved (average well into 6 figures, a few over 7), the number and nature of the parties, etc., even maintaining a "low profile" defense can be time consuming and expensive. By the simple device of changing the method of securing a state leasehold interest, SB 409 would eliminate the necessity of suing the Department in foreclosure actions.

The Department therefore urges your support for SB 409.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Agriculture COMMITTEE BILL NO. HB 841
DATE 3-14-91 SPONSOR(S) Rep. Bergsagel
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ralph Peck	Montana Dept of Ag		
Mike Murphy	4 7 4		
Mar. Reynolds	MT Wildlife Assoc	HB841	
Kurt Reynolds	MT Wildlife Assoc Comm	HB841	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Agriculture COMMITTEE BILL NO. SB 409
DATE 3-14-91 SPONSOR(S) Sen. Mazurek
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
-John North	Dept. of State Land	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.